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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,223	03/08/2001	Christopher Keith	125524	6685

52531 7590 12/13/2007  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC  
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SEATTLE, WA 98101-2347

EXAMINER
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OYEBISI, OJO O

ART UNIT	PAPER NUMBER
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3694

MAIL DATE	DELIVERY MODE
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12/13/2007

PAPER .

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/802,223

Applicant(s)

KEITH, CHRISTOPHER

Examiner

OJO O. OYEBISI

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/07 has been entered. In the RCE filed on 10/22/07, the following have occurred claims 1, 17, 18, 23, and 37 have been amended, and claims 1-42 are still pending.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 17-22, 37-39, and 41-42 rejected under 35 U.S.C. 102(e) as being anticipated by SAIAS et al (SAIAS hereinafter: Pub. No, 2003/0014379).

Re claim 17: SAIAS discloses a method of facilitating trading, comprising:

automatically, at a market process, receiving a preference designation of

anonymous from a first trading process, and automatically at the market process

facilitating a trade between the first trading process and a second trading process wherein the second trading process is unaware of the identity of the first trading process and yet is able to obtain, from the market process, a preference rating for the first trading process, wherein the preference rating is descriptive of the first trading process as a trading party, wherein the first and second trading processes and the market process are each software processes executing on a computer (see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317), and wherein one of the first and second trading processes is engaged in the trade as a buyer, and the other of the first and second trading processes is engaged in the trade as a seller (i.e., operates to automate the exchange of resources among entities pg 21 **paras** 0307-0308).

Re claim 18: SAIAS discloses a method of facilitating trading, comprising: automatically providing information to a preference updating process, and automatically deciding, at a software process executing on a computer, the software process being a first market participant whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference updating process( see pg 21, paragraph 0310-0311, also see pg 22, paragraph 0317-0318), wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants (i.e., automate the exchange of resources among entities pg 21 **paras** 0307-0308).

Re claim 37: Claim 37, though a system claim, recites similar limitations to claim 18 supra and thus rejected using the same art and rationale as in claim 18.

Re claims 19, 38: SAIAS further discloses a method as stated supra wherein the information comprises a rule for determining the preference rating of the second market participant (see pg 21, paragraph 0310-0311).

Re claims 20, 39: SAIAS further discloses a method as stated supra wherein the information comprises a rating (i.e., priority rating score) for the second market participants (see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claim 21: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a platform process (i.e., the AM 108, see pg 21, paragraph 0310).

Re claim 22: SAIAS further discloses a method as stated supra wherein the preference updating process is part of a market process (i.e., automated market, see pg 21, paragraphs 0306-0311).

Re claim 41: SAIAS further discloses the computer-accessible medium wherein the preference rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320).

Re claim 42: SAIAS further discloses the computer-accessible medium wherein the metric is a market price at a time (see pg 22, paragraph 0319).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-16, 23-36, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over SAIAS in view of Defario (US PUB. No.: 20020004774), and further in view of Kane (U.S PAT: 6,317,728).

Re claims 1, 40: SAIAS discloses a method of facilitating trading, comprising: automatically capturing a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants (i.e., Automated market operates to automate the exchange of resource among entities, pg 21 paras 0307-0308), and wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller (i.e., operates to automate the exchange of resources among entities pg 21 paras 0307-0308).

Sias does not explicitly disclose automatically determining by a software process executing on a computer, whether each of the market participants has gained money or lost money from the trade in which they engaged, and automatically updating, by the software process, a preference rating for each of the market participant based on the determination of whether money was gained or lost from the trade. Defario discloses automatically determining by a software process executing on a computer, whether each of the market participants has gained money (i.e., a win) or lost money (i.e., a loss) from the trade in which they engaged (see paras 0072-0080). Defario fails to disclose automatically updating, by the software process, a preference rating for each of the market participant based on the determination of whether money was gained or lost from the trade, wherein the preference rating for each market participant is descriptive of the market participant as a trading party. Kane discloses automatically updating, by the software process, a preference rating for each of the market participant (i.e., a cumulative merit process) based on the determination of whether money was gained or lost from the trade (see col.8, lines 35-67, also see col. 15, lines 5-10), wherein the preference rating for each market participant is descriptive of the market participant as a trading party. Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to allow market participants to pick trading parties based on the parties' trading performance.

Re claim 23: Claim 23, though a system claim, recites similar limitations to claim 1 supra and thus rejected using the same art and rationale as in claim 1.

Re claims 2, 24: SAIAS further discloses the method as stated supra wherein the preference rating is associated with the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).

Re claims 3, 25: SAIAS further disclose the method wherein the preference rating is two-sided, each of the sides corresponding to how one of the two market participants rates the other of the two market participants (see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).

Re claims 4, 26: SAIAS further discloses the method as stated supra wherein the preference rating is based on at least one threshold (i.e., price and quantity, see pg 22, paras 0318-0319).

Re claims 5, 27: SAIAS further discloses the method wherein the at least one threshold is supplied by at least one of the market participants (i.e., information and preferences supplied by the participating entities, see page 21, paragraphs 0310-0311, also see pg 22 paras 0316-0320).

Re claims 6, 28: SAIAS further discloses the method wherein the preference rating is also based on information supplied by at least one of the market participants (i.e., information and preferences supplied by the participating entities, see page 21, paragraphs 0310-0311).



Re claims 7, 29: SAIAS further discloses the method wherein the information comprises a rule for determining the preference rating during the automatic updating (see page 21, paragraphs 0310-0311).

Re claims 8, 30: SAIAS discloses a method wherein the information comprises a rating for the other market participants (i.e., priority rating score, see pg 27, paragraph 0407 to pg 28 paragraph 0409).

Re claims 9, 31: SAIAS further discloses the method wherein a market participant can designate itself as anonymous (see page 22, paragraph 0317).

Re claims 10, 32: Neither SAIAS nor Defario explicitly discloses the method wherein the preference rating is used in determining whether to allow or prohibit a next trade between the market participants. However, Kane discloses the method wherein the preference rating (i.e., cumulative merit quotient) is used in determining whether to allow or prohibit a next trade between the market participants (i.e., the system monitors the success rate and failure rate of each agent and uses the merit quotient to control the power the agent wields in subsequent voting). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to allow market participants to pick trading parties based on the parties' trading performance.

Re claims 11, 33: SAIAS further discloses the method wherein the preference rating is based on comparing the trade price with a metric (see pg 22, paragraph 0320).

Re claims 12, 34: SAIAS further discloses the method wherein the metric is a market price at a time (see pg 22, paragraph 0319).

Re claims 13, 35: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically updating occurs after the trade.

However, Kane makes this disclosure (see col. 13, lines 43-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for uninterrupted flow of trading process.

Re claims 14, 36: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically updating occurs at a predetermined time. However, Kane discloses the method as stated supra wherein the automatically updating occurs at a predetermined time (i.e., daily see col. 13, lines 43-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for uninterrupted flow of trading process.

Re claim 15: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically capturing and updating are performed by a market process. However, Kane discloses the method as stated supra wherein the automatically capturing and updating are performed by a market process (see col.11, number 8, also see col. 13, lines 43-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for remote update of trading rules and settings.

Re claim 16: Neither SAIAS nor Defario explicitly discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process. However, Kane discloses the method as stated supra wherein the automatically capturing is performed by a market process and the automatically updating is performed by a platform process (see col. 13, lines 37-47). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of SAIAS, Defario and Kane to provide for remote update of trading rules and settings.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OJO O. OYEBISI whose telephone number is (571) 272-8298. The examiner can normally be reached on 8:30A.M-5:30P.M.

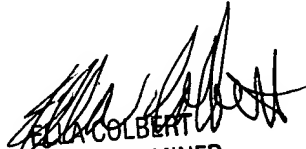
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JAMES TRAMMELL can be reached on (571)272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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O.O

  
ELLA COLBERT  
PRIMARY EXAMINER